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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ex Parte

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C.

Re: FCC Docket MM 92-265

Dear Ms. Searcy:

On March 24, 1993 the attached material regarding the above captioned proceeding was provided to Mr. Robert Corn-Revere of Chairman Quello's Office, Ms. Kathleen Abernathy, Mr. Byron Marchant and Mr. John Hollar of the Offices of Commissioners Marshall, Barrett and Duggan, respectively, and Ms. Alexandra Wilson of the Mass Media Bureau. The points set forth in this material reflect the positions taken by the NYNEX Telephone Companies in their filings in this proceeding.

Very truly yours,



Attachment

cc: R. Corn-Revere (Transmittal letter only)
K. Abernathy (")
B. Marchant (")
J. Hollar (")
A. Wilson (")

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**NYNEX POSITION ON
PROGRAM DIVERSITY
MM DOCKET 92-265
March 24, 1993**

ACCESS TO PROGRAMMING IS ESSENTIAL TO THE CREATION OF A COMPETITIVE MARKETPLACE

- **PROGRAMMING DISTRIBUTORS MUST HAVE REASONABLE AND NONDISCRIMINATORY ACCESS TO PROGRAMMING**
- **CUSTOMERS OF VIDEO DIALTONE SERVICES MUST ALSO HAVE REASONABLE AND NONDISCRIMINATORY ACCESS TO PROGRAMMING.**

**BOTH CONGRESS (IN ITS 1992 CABLE ACT) AND THE FCC
(IN ITS VIDEO DIALTONE PROCEEDING) RECOGNIZED THE
BENEFITS THAT WILL FLOW TO THE CONSUMER FROM
INCREASED VIDEO COMPETITION**

● **GOALS OF CABLE ACT ARE TO:**

- **INCREASE COMPETITION AND DIVERSITY IN MULTICHANNEL VIDEO PROGRAMMING MARKET**
- **MAKE VIDEO PROGRAMMING WIDELY AVAILABLE**
- **SPUR DEVELOPMENT OF TECHNOLOGY**

● **GOALS OF THE FCC IN ITS VIDEO DIALTONE INITIATIVE ARE TO:**

- **INCREASE COMPETITION IN VIDEO MARKET PLACE**
- **INCREASE CONSUMER CHOICE**
- **SPUR TECHNICAL INNOVATION**

VIDEO DIALTONE CUSTOMERS MUST HAVE UNENCUMBERED ACCESS TO PROGRAMMING

COMMISSION RULES SHOULD:

- **PROHIBIT CABLE OPERATORS FROM INFLUENCING SATELLITE PROGRAMMING VENDORS TO REFUSE TO SELL PROGRAMMING TO OR IMPOSE UNFAVORABLE CONDITIONS ON MVPDs USING VDT DELIVERY**
 - **PROHIBIT SATELLITE PROGRAMMING VENDORS FROM DISCRIMINATING ON PRICES, TERMS OR CONDITIONS OF SALE**
 - **PROHIBIT PRACTICES, UNDERSTANDINGS, ARRANGEMENTS AND ACTIVITIES THAT RESTRICT AVAILABILITY OF PROGRAMMING BASED ON DELIVERY METHOD**
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-

EQUAL ACCESS TO PROGRAMMING IS ESSENTIAL

- **FCC SHOULD NOT CONSTRUE SECTION 628 (B) OF THE ACT TO ONLY CONDUCT RELATED TO VERTICAL INTEGRATION**
 - **CABLE OPERATORS CAN INFLUENCE PROGRAM AVAILABILITY BY IMPOSING RESTRICTIVE CONDITIONS FOR CARRIAGE**
- **COMMISSION SHOULD NOT DEFINE ATTRIBUTABLE INTEREST IN TERMS OF "CONTROL"**
 - **SECTIONS 12 & 19 OF THE ACT ONLY ADDRESS THE OPPORTUNITY TO IMPROPERLY INFLUENCE VIDEO PROGRAMMERS OR TO DISCRIMINATE BASED ON AFFILIATION**

COMPLAINT PROCESS SHOULD NOT ERECT ROADBLOCKS

- **FACTS SUPPORTING ALLEGATION OF UNFAIR ACTS DENYING ACCESS TO PROGRAMMING IS SUFFICIENT**
- **RELEVANT GEOGRAPHIC MARKET SHOULD BE THE AREA WHERE ANTICOMPETITIVE CONDUCT OCCURRED**
- **STANDARD FOR PRICE DISCRIMINATION SHOULD BE BASED ON THE OFFERING OF "LIKE" SVCS. UNDER DIFFERENT RATES/TERMS/CONDITIONS**
- **EXISTING CONTRACTS SHOULD BE RENEGOTIATED OVER SIX MONTHS AS COMMISSION SUGGESTS**
- **EXCLUSIVE CONTRACTS SHOULD BE LIMITED TO NEW SERVICES AND ONE YEAR**
- **COMMISSION SHOULD REQUIRE ANNUAL REPORTS DESCRIBING SERVICE OFFERINGS AND THEIR PRICES, TERMS AND CONDITIONS**

**ENFORCEMENT PROCEDURES SHOULD BE
REASONABLE AND DESIGNED TO ENCOURAGE
ENFORCEMENT OF SECTIONS 628 & 616**

- **ADOPT RULES SIMILAR TO EXISTING FORMAL COMPLAINT
PROCEDURES (DO NOT REQUIRE "PRIMA FACIE CASE")**
- **AGGRIEVED PARTY SHOULD BE ABLE TO BRING A COMPLAINT
BEFORE THE COMMISSION**